

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4755 of 1995

WITH

SPECIAL CIVIL APPLICATION NO. 5715 OF 1995

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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POPATLAL DARJIBHAI PATEL

Versus

STATE OF GUJARAT

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Appearance:

SPECIAL C.A. NO. 4755 OF 1995

MR. A.V. PRAJAPATI for MR. PB MAJMUDAR for Petitioners

MR. J.M. THAKORE, ADVOCATE GENERAL WITH

MR. K.C. SHAH, A.G.P. FOR RESPONDENT NO.1

MR HS MUNSHAW for Respondent No. 2 and 3

MR TUSHAR MEHTA for Respondent No. 4

SPECIAL C.A. NO. 5715/95

MR TUSHAR MEHTA, ADVOCATE FOR THE PETITIONER

MR. J.M. THAKORE, ADVOCATE GENERAL

WITH MR. K.C. SHAH, A.G.P. FOR THE RESPONDENT NOS. 1, 4

AND 7

MR. H.S. MUNSHAW FOR RESPONDENT NOS. 2 AND 3

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CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 07/02/97

ORAL JUDGEMENT

The Special Civil Application No. 4755/95 has been filed by residents of village Vanod in Surendranagar District, for a direction on the District Development Officer and the Taluka Development Officer, the respondents Nos. 2 and 3 therein, to take action against the respondent No.4 - Gram Panchayat, for not shifting the Panchayat Office to the new premises. In the alternative, it is prayed that the Panchayat should be superseded.

The Special Civil Application No. 5715/95 is also filed by some residents of the same village and they seek a direction on the respondent authorities and the said Gram Panchayat that the construction put up on the land for its use as Panchayat office should be demolished on the ground that the land which was ear-marked as "zhok" land in which the petitioners were entitled to keep their cattle at night, was used for construction.

Earlier, the controversy as regards the shifting of the Panchayat office to the new building had surfaced in Special C.A No. 2388/95. In that matter, the said Panchayat had approached the High Court seeking a direction for taking action against the authorities for removing the record and other things belonging to the Panchayat to the new office forcibly at middle of the night. That controversy was amicably resolved and the Panchayat agreed to occupy the new building while retaining its old building and by the Panchayat taking up the stand that both the buildings will be used by it.

The Panchayat has taken up a stand that both the buildings are being used by it. This stand is reflected in the affidavit in reply filed by the Panchayat in Special C.A No. 4755/95, in which it has been stated in paragraph 9 that the Panchayat is using both the buildings - namely the existing Panchayat office building as well as the newly constructed building. If at all the Panchayat is not using any building, then it will be for the concerned authorities to look into the matter in accordance with law and the petitioners of Special C.A No. 4755/95 can have no say in the matter. These petitioners cannot insist about the place from where the Panchayat should run its office and none of the rights of these petitioners are affected in any manner by the

Panchayat functioning from its office in one building or the other. Under the earlier arrangement, it was open for the Panchayat to use both the buildings and the petitioners have no locus standi to seek a direction that the Panchayat should function from any particular place. The petitioners of Special Civil Application No. 4755/95 are therefore, not entitled to any relief as prayed for by them and that petition is liable to be rejected.

As regards Special Civil Application No. 5715/95, it is clear that the alleged rights of the petitioners to use any particular land as "zhok" land involve several questions of facts, which cannot be investigated in the writ jurisdiction of this Court. These petitioners do not appear to have taken any steps at the time when the new building was constructed and having allowed that building to be constructed, they are now trying to invoke the writ jurisdiction of this Court for examining their alleged customary rights in respect of the land. As observed above, it will not be appropriate for this Court to go into those questions in this petition. Special Civil Application No. 5715/95 is, therefore, also liable to be rejected.

Under the above circumstances, both these petitions are rejected. Rule is discharged in Special Civil Application No. 4755/95 with no order as to costs. Interim relief stands vacated.

In Special Civil Application No. 5715 of 1995 which was ordered to be heard with Special Civil Application No. 4755/95, notice is discharged with no order as to costs.

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